

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

GREGG DAVID MANN,

Petitioner,

v.

Case No. 5D18-3444

STATE OF FLORIDA,

Respondent.

_____ /

Opinion filed February 1, 2019

Petition Alleging Ineffectiveness
of Appellate Counsel,
A Case of Original Jurisdiction.

Gregg David Mann, Lawtey, pro se.

Ashley B. Moody, Attorney General,
Tallahassee, and Marjorie Vincent-Tripp,
Assistant Attorney General, Daytona
Beach, for Respondent.

PER CURIAM.

Gregg Mann filed the instant petition seeking belated appeal of his January 31, 2017 violation of probation judgment and sentence. We treat the petition as one asserting ineffective assistance of appellate counsel pursuant to Florida Rule of Appellate Procedure 9.141(d) and grant the petition.

A review of this Court's records show that Mann's counsel, Michael Sanders-Randall, did in fact file a notice of appeal but failed to follow through by having the record on appeal filed. As a result of counsel's failure to respond to this Court's order to show cause regarding same, Mann's appeal was dismissed for failure to prosecute.

"In a criminal case, when the substandard performance of counsel is the cause of the dismissal of an appeal depriving the defendant of appellate review, the prejudice prong is satisfied." P.M.W. v. State, 678 So. 2d 484, 485 (Fla. 5th DCA 1996). Here, we conclude Sanders-Randall's representation was substandard, ineffective, and resulted in prejudice to Mann. Sanders-Randall failed to respond to the show cause orders issued by this Court and, as counsel of record, failed to prosecute the appeal, both of which caused Mann's direct appeal to be dismissed.

Accordingly, we grant the petition and reinstate the direct appeal in Case No. 5D17-702. Additionally, we relinquish jurisdiction to the trial court for a period of 30 days to consider and rule on Mann's motion for appointment of appellate counsel. See Johnson v. State, 719 So. 2d 986, 986 (Fla. 5th DCA 1998).

PETITION GRANTED.

COHEN, BERGER and LAMBERT, JJ., concur.